No. 80-429

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE COUNTY OF WASHINGTON AND SHERIFF WARREN BARNES, IN HIS CAPACITY AS SHERIFF OF WASHINGTON COUNTY,

PETITIONERS,

v.

ALBERTA GUNTHER, VELENE M. VALLANCE, MARION E. VANDER ZANDEN AND YVONNE M. HATTON,

RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED
SEPTEMBER 2, 1980
CERTIORARI GRANTED NOVEMBER 3, 1980

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COMPLAINT

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF OREGON

ALBERTA GUNTHER, VELENE M. VALLANCE, MARION E. VANDER ZANDEN, YVONNE M. HATTON, Plaintiffs, vs. THE COUNTY OF WASHINGTON; SHERIFF WARREN BARNES, in his capacity as Sheriff of Washington County; CAPTAIN STAN FRIESE and SERGEANT CLARENCE RAMSETH, in their capacities as Washington County Police Officers, Defendants.	)	Civil No. 74-581 COMPLAINT

NATURE OF ACTION

This is an action for declaratory judgment and damages under Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e, et seq.

JURISDICTION

The Court has jurisdiction of this proceeding under 28 USC § 1343 and 42 USC § 2000e et seq.

PLAINTIFFS

Plaintiffs are female citizens of the United States, residents of the State of Oregon and over the age of 21 years.

Prior to January 15, 1973, plaintiffs were employed by defendants as jail matrons at the Washington County jail.

DEFENDANTS

Washington County is a political subdivision of the State of Oregon and is an employer within the meaning of 42 USC § 2000e.

Defendant Warren Barnes is the Sheriff of Washington County, and Captain Stan Friese and Sergeant Clarence Ramseth are Washington County police officers. Defendants Barnes, Friese and Ramseth are each agents of Washington County, within the meaning of 42 USC § 2000e.

VIOLATION OF TITLE VII

In their employment by defendants as jail matrons, plaintiffs received lower compensation than male employees performing substantially the same services. When plaintiffs requested defendants to provide plaintiffs with compensation equal to that paid to plaintiffs' male counterparts, defendants refused. As a consequence of plaintiffs' demands to receive equal pay, defendants terminated plaintiffs' employment.

Defendants' refusal to provide plaintiffs with compensation equal to that paid to their male counterparts and defendants' termination of plaintiffs employment for the reason that plaintiffs demanded equal pay constitutes unlawful employment practices within the meaning of 42 USC § 2000e-2.

DAMAGES

As a consequence of defendants' unlawful employment practices, plaintiffs have been damaged to the extent of $8,000 each for lost wages.

Defendants' violations of Title VII were willful and plaintiffs are entitled to punitive damages in the amount of $5,000 each.

EXHAUSTION OF REMEDIES

On February 8, 1974, each of the

plaintiffs filed with the Equal Employment Opportunity Commission (EEOC) and the Civil Rights Division of the Bureau of Labor of the State of Oregon a charge that defendants discriminated against them in violation of Title VII of the Civil Rights Act of 1964, as amended.

On February 15, 1974, the Civil Rights Division of the Bureau of Labor of the State of Oregon terminated its jurisdiction of plaintiffs' complaint.

On April 24, 1974, plaintiffs received written notice from the United States Department of Justice that the EEOC would not be able to investigate and conciliate plaintiffs' charges within 180 days of the date the EEOC assumed jurisdiction, and that plaintiffs therefore had the right to institute a civil action against defendants under Title VII of the Civil Rights Act of 1964.

COSTS AND ATTORNEYS FEES

Plaintiffs are entitled by law to their costs and reasonable attorneys fees.

WHEREFORE, plaintiffs pray for relief as follows:

1. For a judgment declaring that defendants' refusal to pay plaintiffs compensation equal to that paid to plaintiffs male counterparts was an unlawful employment practice under Title VII of the Civil Rights Act of 1964, as amended;

2. For judgment declaring that defendants' termination of plaintiffs' employment for the reason that plaintiffs demanded equal pay was an unlawful employment practice under Title VII of the Civil Rights Act of 1964, as amended;

3. For compensatory damages in the

amount of $8,000 for each plaintiff;

4. For punitive damages in the amount of $5,000 for each plaintiff;

5. For costs and attorneys fees;

6. For such other relief as the Court deems proper.

DATED this 17th day of July, 1974.

LINDSAY, NAHSTOLL, HART,
DUNCAN, DAFOE & KRAUSE

By /s/ Carol A. Hewitt
Of Attorneys for Plaintiffs

(Jurats, exhibits and affidavits of service omitted.)

ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

ALBERTA GUNTHER, et al,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	Civil No.
THE COUNTY OF WASHINGTON, et al,	)	74-581
	)	
	)	ANSWER
Defendants.	)	

FIRST DEFENSE

1. Defendants admit the allegations contained in the paragraph of the complaint entitled Nature of Action; admit the first sentence in the paragraph entitled Plaintiffs; admit that prior to January 15, 1973, plaintiffs were employed by defendant Washington County as jail matrons at the Washington County jail; and admit the first two sentences in the paragraph entitled Defendants.

2. Defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in the paragraph entitled Exhaustion of Remedies.

3. Defendants deny each and every other allegation contained in the complaint.

SECOND DEFENSE

Jurisdiction is predicated upon 42 USC 2000e et seq. which statutes, when applied to local government and local government employees performing governmental functions, are unconstitutional because of an attempted exercise of congressional power beyond the limits of the Federal Commerce Power.

THIRD DEFENSE

The complaint fails to state a claim upon which relief can be granted because defendants are protected by sovereign and official immunity.

WHEREFORE, the defendants, and each of them demand judgment dismissing the complaint, with costs and reasonable attorney fees.

Office of Washington
County Counsel

By /s/ Lawrence R. Derr
Of Attorneys for Defendants

(Jurat and affidavit of service omitted.)

PRETRIAL ORDER

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF OREGON

(Title omitted in printing)

As a result of pretrial conferences heretofore held, at which Plaintiffs were represented by Carol A. Hewitt, of Lindsay, Nahstoll, Hart, Dafoe & Krause, and Defendants were represented by Lawrence R. Derr, Washington County Counsel's Office, their respective counsel, the following issues of fact and law were framed and exhibits identified.

I

STATE OF JURISDICTION

1. Nature of Proceedings

Plaintiffs seek a declaratory judgment that the defendants discriminated against Plaintiffs on the basis of sex

in violation of Title VII of the Civil Rights Act of 1964, as amended. Plaintiffs also seek damages and attorneys' fees under the Act. Plaintiffs contend that the Court has jurisdiction under 28 USC §1343 and 42 USC §2000e et seq (Title VII).

II

AGREED FACTS

The following facts have been agreed upon by the parties and require no proof:

1. Each of the plaintiffs is a citizen of the United States, a resident of the State of Oregon and of the female sex.

2. Prior to January 15, 1973, plaintiffs were employed by defendants as jail matrons at the Washington County jail.

3. Defendant Washington County is

a political subdivision of the State of Oregon and is an employer within the meaning of Title VII.

4. Defendant Warren Barnes is the Sheriff of Washington County.

5. In their employment by defendants as jail matrons, plaintiffs received lower compensation than male employees of defendants who were classified as deputy sheriffs and later, corrections officers.

6. During 1973, plaintiffs' employment with the defendants was covered by a collective bargaining agreement between the County and the Washington County Police Officer's Association (The "Association"), of which the plaintiffs were members.

7. Article IV of the collective bargaining agreement between The Association and the County prohibited dis-

crimination in its application on the basis of age, marital status, race, color, creed, religion, national origin, union affiliation or political affiliation. The agreement does not list sex as a prohibited basis for discrimination.

8. On three occasions during the last two weeks of October 1973, the Plaintiffs discussed with the Washington County personnel officer, Ryan Brown, Plaintiffs' concern about the fact that Plaintiffs received a lower rate of pay than the male employees who worked in the men's section of the jail.

9. In September 1973, Plaintiff Marion Vanderzanden applied for a leave of absence from her employment with the County due to the fact that she had been physically ill and had been unable to work since August 9, 1973.

10. On September 30, 1973, Plain-

tiff Marion Vanderzanden's superior, Sergeant Ramseth, wrote a memorandum to Under-Sheriff Charles Sherratt, recommending that no leave of absence be granted to Plaintiff Vanderzanden and that "after 52 days absence that action should be taken to terminate this employee." In accordance with this recommendation, Plaintiff Marion Vanderzanden resigned her employment with Defendants.

11. In December 1973, Washington County terminated the position of jail matron and in January 1974, terminated the employment of the remaining Plaintiffs.

12. At the time Plaintiffs Vallance, Gunther and Hatton were terminated, a form entitled "Personnel Action" was filled out by Sheriff Barnes on each of the above-named Plaintiffs stating that these three Plaintiffs

would not be rehired by the Sheriff.

13. The Civil Service Examination used by Defendant Washington County for the position of jail matron was the same examination used for corrections officer and was entitled "County Civil Service Examination for Matron-Jailer."

14. Plaintiffs have exhausted their administrative remedies.

III

PLAINTIFFS' CONTENTIONS

Plaintiffs make the following contentions:

1. The Court has jurisdiction of this proceeding under 28 USC §1343 and 42 USC §2000e et seq. (referred to herein as Title VII).

2. At all times material, Plaintiffs were employees of Defendants within the meaning of Title VII, and Defen-

dants were employers of Plaintiffs.

3. As jail matrons, Plaintiffs performed substantially the same work as Plaintiffs' male counterparts in the male section of the Washington County jail, who were classified as deputy sheriffs and later as corrections officers.

4. Defendants refused Plaintiffs the same fringe benefits and educational opportunities that Defendants afforded to corrections officers solely on the basis of Plaintiffs' sex. Defendants' refusal and failure to pay Plaintiffs the same pay as it paid Plaintiffs' male counterparts who performed substantially the same work, constitutes a violation of Title VII and the Equal Pay Act.

5. On numerous occasions, Plaintiffs informed Defendants and their agents that Plaintiffs believed they

were entitled to pay equal to that paid their male counterparts.

6. Defendants terminated Plaintiffs' employment because Plaintiffs attempted to assert their rights to equal pay, and such termination was in retribution for Plaintiffs making such claim.

7. On at least one occasion, Defendants' agent informed Plaintiffs that if they continued to demand equal pay they would lose their jobs.

8. At the time Defendants terminated Plaintiffs' employment, each of the Plaintiffs except Marion Vanderzanden was ready, willing and able to perform services for Defendants as required by Plaintiffs' employment.

9. Defendants refused to grant Plaintiff Marion Vanderzanden a leave of absence because she had requested equal

pay to that paid to her male counterpart.

10. Defendant Warren Barnes is an employer within the meaning of Title VII.

11. Plaintiff Marion Vanderzanden was forced by Defendants to resign her employment with Defendants.

12. Under-Sheriff Charles Sherratt was granted a leave of absence in March 1973 due to the fact that he suffered a heart attack and returned to work in July of 1973. He was again granted a leave of absence in March of 1975 and as of July 10, 1975 had not yet returned to work.

13. Plaintiffs are entitled to damages, costs and reasonable attorneys' fees and punitive damages.

IV

DEFENDANTS' CONTENTIONS

1. The Court does not have juris-

diction of this proceeding because Title VII, when applied to local government and local government employees performing governmental functions, is unconstitutional as an attempted exercise of congressional power beyond the limits of the Federal Commerce Power.

2. The wages and fringe benefits paid to Plaintiffs in 1972 and 1973 were negotiated with the Washington County Police Officers Association, Plaintiffs' representative, through collective bargaining and were not determined based on Plaintiffs' sex.

3. Plaintiff Marion Vanderzanden resigned voluntarily for health reasons when she was unable to perform her job and had used all of her accrued sick leave.

4. The jail matrons positions were abolished because female prisoners were

no longer lodged in the Washington County jail. The decision to board female prisoners was based primarily on the need for additional room for male prisoners and incidentally on cost economy. The remaining Plaintiffs were laid off because they did not qualify or apply for other County positions.

5. Other jail matrons, not Plaintiffs in this suit, did qualify and apply for other County positions and are presently employed by the County.

6. Defendants are entitled to their costs and reasonable attorneys' fees.

V

ISSUES OF FACT

The parties believe that the issues of fact are adequately framed by this Pretrial Order and the record in this case.

VI

ISSUES OF LAW

The parties believe that the issues of law are adequately framed by this Pretrial Order and the record in this case.

VII

EXHIBITS

DATED this 20th day of July, 1975.

/s/ Gus J. Solomon
District Judge

The foregoing Pretrial Order is approved:

/s/ Carol A. Hewitt — 10/20/75
Attorney for Plaintiff — Date

/s/ Lawrence R. Derr — 10/20/75
Attorney for Defendant — Date

OPINION

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF OREGON

(Reproduced in the Petition for

Writ of Certiorari, page 57a)

NOTICE OF APPEAL

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF OREGON

(Title omitted in printing)

Notice is hereby given that Alberta Gunther, Velene M. Vallance, Marion E. Vander Zanden and Yvonne M. Hatton, plaintiffs above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 3rd

day of September, 1976.

Dated this 28th day of September, 1976.

LINDSAY, NAHSTOLL, HART
& KRAUSE

By /s/ Carol A. Hewitt
Of Attorneys for Plaintiffs

(Jurat and affidavit of service omitted.)

OPINION

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Reproduced in the Petition for Writ of Certiorari, page 20a)

SUPPLEMENTAL OPINION
ON DENIAL OF REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Reproduced in the Petition for

Writ of Certiorari, page 1a)

ORDER DENYING
PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Reproduced in the Petition for

Writ of Certiorari, page 77a)

CHRONOLOGICAL LIST

Complaint filed	July 19, 1974
Defendants' Answers to Plaintiff's interrogatories filed	February 1, 1975
Answer filed	February 18, 1975
Defendants' Supplemental Answers to Plaintiff's Interrogatories filed	February 28, 1975
Defendants' Third-Party Complaint Against the Washington County Police Officers' Association filed	February 28, 1975

Washington County Police Officers' Association Motion to Dismiss Third-Party Complaint filed	March 27, 1975
Recommendation and Order Dismissing Third-Party Complaint filed	April 22, 1975
Pretrial Order filed	March 19, 1976
Trial commenced	March 19, 1976
Opinion and Judgment of the District Court filed	September 3, 1976
Notice of Appeal filed	September 29, 1976